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	APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
	10/804,955	03/19/2004	Stephen Hochschuler	3110.22US03	8076	
	24113 PATTERSON.	24113 7590 01/25/2008 PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.			EXAMINER	
	4800 IDS CENTER			SCHILLINGER, ANN M		
	80 SOUTH 8TH STREET MINNEAPOLIS, MN 55402-2100		a a	ART UNIT	PAPER NUMBER	
	•	3774				
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				MAIL DATE ·	DELIVERY MODE	
				01/25/2008	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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	Application No.	Applicant(s)	
•	10/804,955	HOCHSCHULER ET AL.	
Office Action Summary	Examiner	Art Unit	
	Ann Schillinger	3774	
The MAILING DATE of this communication app Period for Reply	pears on the cover sheet	with the correspondence address	
A SHORTENED STATUTORY PERIOD FOR REPL WHICHEVER IS LONGER, FROM THE MAILING D - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period - Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUI 36(a). In no event, however, may will apply and will expire SIX (6) May cause the application to become	NICATION. a reply be timely filed ONTHS from the mailing date of this communication. ABANDONED (35 U.S.C. § 133).	
Status			
1)⊠ Responsive to communication(s) filed on 31 C 2a)⊠ This action is FINAL . 2b)□ This 3)□ Since this application is in condition for allowa closed in accordance with the practice under B	s action is non-final. nce except for formal m		
Disposition of Claims			
4) Claim(s) <u>25-27</u> is/are pending in the applicatio 4a) Of the above claim(s) is/are withdra 5) Claim(s) is/are allowed 6) Claim(s) <u>25-27</u> is/are rejected. 7) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and/o	wn from consideration.		
Application Papers			
9) The specification is objected to by the Examine 10) The drawing(s) filed on is/are: a) acc Applicant may not request that any objection to the Replacement drawing sheet(s) including the correct 11) The oath or declaration is objected to by the Ex	epted or b) objected drawing(s) be held in abey tion is required if the drawi	ance. See 37 CFR 1.85(a). ng(s) is objected to. See 37 CFR 1.121(d)) .
Priority under 35 U.S.C. § 119			
12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of: 1. Certified copies of the priority document 2. Certified copies of the priority document 3. Copies of the certified copies of the priority application from the International Bureat * See the attached detailed Office action for a list	s have been received. s have been received in rity documents have be u (PCT Rule 17.2(a)).	Application No en received in this National Stage	
		•	
Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 10/31/2007.	Paper N	v Summary (PTO-413) o(s)/Mail Date f Informal Patent Application ttachment B.	

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuslich (U.S. Pat. No. 5,549,679). Kuslich discloses the following of claim 25: an implantable device for insertion into a cavity in a vertebral body comprising an expandable container (40) including an upper wall member (Attachment B), a lower wall member (Attachment B), and a circumferential wall member (42), said wall members together defining a single chamber adapted to be inserted into a vertebral body (see Figures 4, 5 where the vertebral body has portions cut away to make room for the chamber to be inserted into it).

Kuslich discloses the following of claim 26: the device of claim 25 wherein said upper and lower wall members have a substantially horseshoe shape in a transverse plane (Attachment B).

Kuslich discloses the following of claim 27: the device of claim 25 wherein said upper and lower wall members have a substantially triangular shape in a transverse plane (Attachment B).

Application/Control Number: 10/804,955

Art Unit: 3774

Conclusion

This is a RCE of applicant's earlier Application No. 10/804955. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Schillinger whose telephone number is (571) 272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3774

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ann Schillinger January 14, 2008

CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TFCHNOLOGY CENTER 3700

Attachment B

